City of Lafayette/Lafayette Redevelopment Agency Staff Report

For: City Council/Redevelopment Agency

By: Glenda Warmoth
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Date Written: November 26, 2008

Meeting Date: December 8, 2008

Subject: **Approval of a Loan Agreement, Inter Creditor Agreement and City Regulatory Agreement with Eden Housing Inc.**

Purpose

On November 21, 2008, the Planning Commission granted Eden Housing, Inc. a land use permit to construct a 46 unit affordable senior housing project. City/Redevelopment Agency approval of the following agreements with exhibits is necessary to allow Eden to proceed with the construction of the project:

1. Loan Agreement
2. Inter Creditor Agreement
3. City Regulatory Agreement

Background

Since the execution of the fund reservation agreement and the predevelopment loan agreement with the Lafayette Redevelopment Agency, Eden has worked diligently with staff to take its application for development (L02-08) thought the review process. On November 21, 2008 the Planning Commission adopted Resolution 2008-30 approving L02-08 Eden Housing Project subject to conditions of approval.

The adoption of Resolution 2008-30 grants Eden a land use permit to construct an affordable senior housing building located at 3426 Mr. Diablo Blvd. The new structure would contain 46 dwelling units; have parking for 30 vehicles, a maximum building height of 42 ft and a gross floor area of 52,324 sq. ft. The project review included an initial study as outlined in the California Environmental Quality Act. Staff determined through the course of review that the projects related effects will have an effect on the environment and a Mitigated Negative Declaration was executed.

Density Bonus Provisions (concessions & waivers)

The State of California density bonus law provides a density bonus of 35% for projects which set aside 11 percent of their units to very low income residents. The density allowed out right by the C-1 district is 28 units. The 35 percent density bonus increases the unit count by ten units bringing the project total up to 38 units. The state density bonus law also provides the opportunity for an applicant to request up three concessions and one waiver for project containing at least 15 percent of the units affordable to very low income residents. Based on these regulations the applicant has made the following requests:

1. Increase the density allowed to 57.5 units per acre allowing 46 units (concession)
2. Increase the building height to 42 feet where 35 feet is allowed (concession)
3. Reduce the required quantity of parking spaces from 46 spaces to 30 spaces (concession)
4. Reduce the required third story setback from 50 feet to 45 feet (waiver)

Per section 65815(d)(2)(C) of the Government Code an applicant is entitled to receive the requested concessions and waiver so long as the City does not find specific adverse impacts to the health, safety or physical environment which cannot be mitigated or avoided. To review the potential impacts of the proposed application, staff conducted an initial study of the application to determine whether the project might have significant effects on the environment. The initial study determined that the related construction effects will have an effect on the environment and a Mitigated Negative Declaration was executed.

Agreements Summarized

Loan Agreement – provides a detailed list of conditions, rights and responsibilities for the actual expenditure of funds. It grants to the Agency the right of first refusal to purchase the Development at the end of the 55 year period.

Deed of Trust-- this document is recorded against the property and explains the assignment of rents, security agreements, etc.

Agency Regulatory Agreement—provides for the continued affordability of 22 (48%) of the units for 55 years for very low income households and includes the standard redevelopment nondiscrimination covenants. Requiring more than 49% of the units to be available to very low income households would require voter approval under Article 34 of the California Constitution.

Inter Creditor Agreement—provides the general terms of agreement between City RDA, Eden and Contra Costa County for the expenditure of funds.

City Regulatory Agreement—provides for the continued affordability of 5 very low income units that qualified Eden for the award of the density bonus as required by Density Bonus Law.

Promissory Note – provides the general terms of the agreement between the City RDA and Eden Housing, specifically noting the agreement to repay.

Recommendations

Staff recommends that the City Council/Redevelopment Agency Board approve the following agreements and authorize the City Manager/Executive Director to execute the agreements on its behalf:

1. Loan Agreement and Agency Regulatory Agreement with Eden Housing, Inc.
2. Inter Creditor Agreement with Eden Housing, Inc and Contra Costa County
3. City Regulatory Agreement with Eden Housing, Inc.

Staff also recommends that the Agency Board approve the promissory note as to form.

Attachments

1. Loan Agreement
2. Inter Creditor Agreement
3. City Regulatory Agreement
4. Promissory Note

LOAN AGREEMENT

(PREDEVELOPMENT, ACQUISITION AND CONSTRUCTION)

BY AND BETWEEN

THE REDEVELOPMENT AGENCY OF
THE CITY OF LAFAYETTE

AND

EDEN HOUSING, INC.

LOAN AGREEMENT
(Predevelopment, Acquisition and Construction)

This Loan Agreement (the "Agreement") is entered into as of December 1, 2008 (the "**Effective Date**"), by and between the Redevelopment Agency of the City of Lafayette, a public body, corporate and politic (the "**Agency**") and Eden Housing, Inc., a California nonprofit public benefit corporation (the "**Developer**"), with reference to the following facts, purposes and intentions.

RECITALS

A. The Agency has established an Affordable Housing Fund (the "**Housing Fund**") pursuant to Health and Safety Code Section 33334.2.

B. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*, the "**Redevelopment Law**"), the City Council (the "**City Council**") of the City of Lafayette (the "**City**") has adopted and the Agency is responsible for implementing the Redevelopment Plan for the Lafayette Redevelopment Project Area (the "**Project Area**"), adopted by the City by Ordinance No. 437 on December 27, 1994, as amended from time to time (the "**Redevelopment Plan**").

C. The Developer intends to acquire that parcel of real property in the Project Area at 3430 and 3434 Mt. Diablo Boulevard, Lafayette, more particularly described in **Exhibit A** attached hereto and incorporated herein (the "**Property**") for the purpose of constructing, owning and operating 45 units of senior rental housing affordable to lower income households plus one resident manager's unit (the "**Development**")

D. Pursuant to that Predevelopment Loan Agreement between the Agency and Eden Housing, Inc., dated as of December 10, 2007, the Agency made predevelopment loan to Eden in the amount of $2,200,000 to finance certain predevelopment activities in connection with the Development (the "**Predevelopment Loan**"). The Predevelopment Loan consists of funds from the Agency's Housing Fund.

E. In accordance with the Predevelopment Loan Agreement, the Developer has applied for, and the Agency has approved, an additional subsequent loan in the amount of $800,000. The additional loan together with the $2,200,000 Predevelopment Loan shall constitute a new loan from the Agency in the amount of Three Million Dollars ($3,000,000) (the "**Agency Loan**") to pay for predevelopment costs of the Development, acquisition costs of the Property, and additional predevelopment expenses and construction costs of the Development.

F. Pursuant to the terms of the Redevelopment Law, the Developer will, concurrently with its acquisition of the Property, record restrictions as specified in this Agreement on the Property, ensuring that the units in the Development, except for the resident manager's unit, are rented to households who qualify as "elderly" or senior" and not more than 49% of the units are

rented to lower income households under applicable federal, State or local law for a specified period.

G. The Agency intends to apply the units to be developed in the Development toward satisfaction of its project area housing production obligations under Health and Safety Code Section 33413(b).

H. As more fully set forth in Section 6.14, this Agreement does not authorize the granting of the Land Use Approvals or the construction of the Development. Such actions may be authorized and will become possible only upon subsequent discretionary action of the City and/or the Agency.

I. Prior to approval of this Agreement, the Agency has completed its environmental assessment of the Development in accordance with the provisions of the California Environmental Quality Act ("CEQA") and has approved a negative declaration in accordance with the provisions of CEQA.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Agency" means the Redevelopment Agency of the City of Lafayette, a public body, corporate and politic.

(b) "Agreement" means this Loan Agreement.

(c) "Approved Development Budget" shall mean the proforma development budget, including sources and uses of funds, as the same may be revised from time to time and approved by the Agency, and attached hereto and incorporated herein as **Exhibit D**.

(d) "Assignment of Plans" means those certain assignment agreements pursuant to which the Developer assigns to the Agency the Developer's rights and obligations with respect to certain agreements, plans and specifications, and approvals. The Assignment of Plans is attached hereto as **Exhibit H.**

(e) "CEQA" means the California Environmental Quality Act and its implementing guidelines and regulations.

(f) "City" means the City of Lafayette, a municipal corporation.

(g) "Deed of Trust" or "Agency Deed of Trust" means the deed of trust that will encumber the Development to secure repayment of the Loan. The form of the Deed of Trust shall be in substantially the form attached as **Exhibit B**.

(h) "Default" has the meaning set forth in Section 5.1.

(i) "Developer" means Eden Housing, Inc., a California nonprofit public benefit corporation or its approved successors and assigns.

(j) "Development" means the Property and the approximately forty-five (45) unit senior rental housing development with one resident manager's unit and other improvements constructed on the Property.

(k) [intentionally left blank]

(l) "Effective Date" shall mean the date first set forth above.

(m) "Land Use Approvals" means the permits and approvals necessary for the construction of the Development on the Property, including, but not limited to, overall design and architectural review and approval by the City and any other applicable government entity.

(n) "Loan Documents" or "Agency Loan Documents" means this Agreement, Assignment of Plans, the Note, the Deed of Trust and the Regulatory Agreement.

(o) "Loan" means the Agency's loan to the Developer made pursuant to this Agreement in the total principal amount of $3,000,000, consisting of a Predevelopment Component, Acquisition Component and Construction Component.

(p) "Note" means the promissory note dated as of the date of this Agreement evidencing the Developer's obligation to repay the Loan.

(q) "Property" means that certain real property described in **Exhibit A**.

(r) "Regulatory Agreement" or "Agency Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants between the Agency and the Developer to be recorded against the Property upon acquisition by the Developer, which shall regulate the use and occupancy of the Development for not less than 55 years.

(s) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall terminate fifty-five (55) years from the date the final certificate of occupancy is issued following the initial construction of the Development, unless sooner terminated pursuant to the terms of this Agreement.

(t) "Transfer" has the meaning set forth in Section 3.16, below.

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A	Legal Description of the Property
Exhibit B	Form of Deed of Trust
Exhibit C	Form of Regulatory Agreement
Exhibit D	Approved Development Budget
Exhibit E	Development Schedule
Exhibit F	Insurance Requirements
Exhibit G	HUD-Required Provisions Rider
Exhibit H	Assignment of Plans

ARTICLE 2
LOAN PROVISIONS

Section 2.1 Loan.

(a) Subject to the terms and conditions set forth in this Agreement, the Agency shall loan to the Developer the total principal sum not to exceed Three Million Dollars ($3,000,000) (the "Loan") comprised of the $2,200,000 Predevelopment Loan and an additional $800,000 from the Agency's Housing Fund. The Loan shall be evidenced by the Note which shall be executed by the Developer concurrently herewith. The Loan shall bear simple interest at a rate of three percent (3%) per year, subject to the provisions for a default interest rate set forth in the Note. The Loan shall be nonrecourse and secured by the Deed of Trust as set forth in Section 2.3(b).

(b) The Agency shall not execute this Agreement unless the Agency, prior to the execution of this Agreement, shall have satisfied itself that there are no prior Deeds of Trust or encumbrances on the Property to which the Agency has not executed a subordination agreement pursuant to Section 2.5 of the Predevelopment Loan. Upon the full execution of this Agreement by the Developer and Agency, the Note, Deed of Trust, Assignment of Plans, and Regulatory Agreement, the Agency's predevelopment loan to Eden Housing, Inc. shall become a part of this Loan and the following Predevelopment Loan documents shall automatically terminate and have no further force or effect: The Predevelopment Loan Agreement; and Promissory Note (Predevelopment Loan – Eden Housing, Inc.); and Assignment of Agreement signed by Eden Housing. The Agency shall cancel the Predevelopment Note and return the cancelled original Predevelopment Note to Eden Housing.

Section 2.2 Payment Dates; Maturity Date. Annual payments shall be due and payable on a residual receipts basis as set forth in the Note. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Agency Loan Documents shall be due and payable in full on the fifty-fifth (55^{th}) anniversary of the date that City issues the final certificate of occupancy for the Project or upon occurrence of a Default as defined in Section 5.1 that remains uncured after expiration of the applicable cure period.

Section 2.3 Security.

Developer assigns to the Agency its rights and obligations with respect to certain agreements, plans and specifications, and approvals, pursuant to the terms of the Assignment of plans, which shall be executed concurrently herewith. The assignment shall become effective upon an event of Default of the Developer as defined in Section 5.1 below that remains uncured after expiration of the applicable cure period. The Agency shall not have any obligation under any contracts or agreements assigned pursuant to the Assignment of Plans until it expressly agrees in writing to be bound by such contracts or agreements. Upon an event of Default that has not been cured pursuant to this Agreement, the Agency may use any of the foregoing assigned documents for any purpose for which the Developer could have used them for development of the Development subject to the limitations, if any, imposed by the third-party preparer of the assigned documents, or in the case of the assigned documents prepared by the Architect, subject to the terms of the Architect's consent executed by the Architect. The Developer shall cooperate with the Agency to implement the Assignment of Plans and immediately deposit with the Agency for the Agency's use all the Documents.

Concurrently with Developer's acquisition of title to the Property, the Developer shall execute and record against the Property the Deed of Trust (in substantially the form attached hereto as **Exhibit B**) and the Regulatory Agreement (in substantially the form attached hereto as **Exhibit C**). In accordance with Section 2.7 below the Agency agrees to subordinate the Deed of Trust and the Regulatory Agreement to the lien of the deeds of trust securing the construction loan or loans, permanent loan(s) and refinancing loan(s) approved by the Agency.

Section 2.4 Use of Loan Proceeds. The Developer shall use the Loan to fund construction of the Development consistent with the Approved Development Budget. More specifically, the Loan proceeds may be used only for the following Development costs: (i) predevelopment costs listed in Approved Development Budget attached as **Exhibit D** and such other costs approved in writing by Agency Executive Director or his/her designee up to the amount of Four Hundred Eighty-Six Thousand One Hundred Dollars ($486,100) (the "**Predevelopment Component**"); (ii) the acquisition of the Property, including the purchase price, escrow, title, recording, prorated taxes and assessments, legal and other fees and costs associated with acquisition of the Property (the "**Acquisition Component**"); and any balance of undisbursed Loan proceeds for construction of the Development (the "**Construction Component**"). In addition to hard construction costs, the Construction Component may be used for the following: building permits and fees required for the construction of the Development; title and other construction loan closing costs; architectural and other fees as set forth in **Exhibit D**.

Section 2.5 Conditions to Disbursement of Loan Proceeds. The Agency's obligation to fund the Loan and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

2.5.1 Predevelopment Component. To the extent the Agency has not previously disbursed the Predevelopment Component under the Predevelopment Loan Agreement, the Agency shall disburse the remainder of the Predevelopment Component to Developer in one or more monthly disbursements when the following conditions to disbursement have been satisfied:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under the Loan Documents;

(b) Developer's delivery to the Agency of each of the following signed by Developer: An original executed copy of this Agreement, Assignment of Plans, the Note, Deed of Trust and Regulatory Agreement;

(c) Developer's delivery to the Agency of each of the following: (i) copy of Developer's certificate of good standing from the Secretary of State, (ii) a certified copy of Developer's resolution authorizing this transaction and the person(s) executing this Agreement and the other Agency Loan Documents.

(d) Developer's delivery to the Agency of evidence of insurance coverage in accordance with the requirements set forth in Section 3.15.

(e) Developer's delivery to the Agency of Developer's written requisition specifying the amount and use of the requested funds, accompanied by copies of third-party and Developer invoices, and such other documentation as the Agency shall reasonably require.

Upon satisfaction of these conditions, the Agency shall from time to time disburse the Predevelopment Component of the Loan (or so much thereof as is required), for items consistent with those shown in **Exhibit D**. Notwithstanding any other provisions of this Agreement, the Agency shall have no further obligation to disburse any portion of the Loan to the developer following: (1) termination of this Agreement; or (ii) notification by the Agency to the Developer of a Default under the terms of this Agreement that has not been timely cured.

2.5.2 Acquisition Component. The Agency shall disburse the Acquisition Component to Developer when the following conditions to disbursement have been satisfied. The parties contemplate that the Acquisition Component shall be made in one disbursement through escrow.

(a) Developer's prior satisfaction of the conditions set forth in subsection 2.5.1(a), (b), (c), (d), and (e) above.

(b) The recording of the Deed of Trust and Regulatory Agreement.

(c) The issuance by a title company satisfactory to the Agency of an ALTA loan policy of title insurance ("Agency Title Policy") in the amount of the Loan, insuring the Agency that the lien of the Agency Deed of Trust is subject only to such liens, conditions, encumbrances, restrictions, easements and exceptions as the Agency may approve in writing and

containing such endorsements as the Agency may reasonably require, with the cost of the Agency Title Policy to be paid by the Developer.

(d) The Agency's receipt of a written requisition for disbursement of funds from Developer specifying the amount and use of the requested funds, which may be satisfied by the title company's estimated settlement statement showing the acquisition price, closing costs and all other amounts due in escrow for Developer's acquisition of the Property.

2.5.3 Construction Component. The Agency shall not be obligated to make any disbursements of Loan proceeds for construction of the Development, or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of the Loan, except as set forth in paragraph following item (e) below:

(a) The Developer's prior satisfaction of the conditions set forth in subsection 2.5.1 and 2.5.2 above.

(b) The Developer has delivered to Agency an updated Approved Development Budget showing that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Development, are not less than the amount necessary to pay for construction of the Development;

(c) The Developer has delivered to the Agency copies of the following Development documents: Final plans and specifications for the Development; the general contractor's construction contract that the Developer has entered for construction of the Development; labor and material (payment) bonds and performance bonds or alternative form of assurance of completion as approved by the Agency, which approval shall not be unreasonably withheld, delayed or conditioned;

(d) The Developer's other construction loans are ready to close or have issued commitments to close within thirty (30) days;

(e) The Agency has received a written draw request from the Developer, including certification that the condition set forth in subsection 2.5.3(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay the general contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by the Developer's architect reasonably acceptable to the Agency that the work for which disbursement is requested has been completed; (ii) a copy of the inspection report prepared by the construction lender's inspector, and (iii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the Agency. The Developer shall deliver to Developer's other construction lenders copies of all disbursement requests following approval and execution by the Agency.

Notwithstanding the above conditions precedent to the disbursement of the Construction Component, the Agency shall disburse the Construction Component for the following costs and

fees upon Developer meeting the conditions set forth as items (a), (b) and the first sentence of (e) of this subsection 2.5.3: Building permit fees, other fees for approvals and other items required to be paid prior to the construction loan closing.

The Agency acknowledges that Developer's senior construction lenders shall require that the Loan shall be fully disbursed prior to the senior construction lender's disbursement of the senior construction loan.

Section 2.6 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the Agency shall have no obligation to disburse or authorize the disbursement of any portion of the Loan proceeds following the failure of any of the Developer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects or the occurrence of an Event of Default under this Agreement or any of the Loan Documents, which remains uncured beyond any applicable cure period.

Section 2.7 Subordination. The Agency Deed of Trust and/or Agency Regulatory Agreement shall be subordinated to financing approved by the Agency (in each case, a "**Senior Lien**"), but only if all of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Lien, less any transaction costs, shall be used to provide acquisition, construction and/or permanent financing or refinancing for the Development.

(b) The proposed lender (each, a "**Senior Lender**") must be a state or federally chartered financial institution, a nonprofit corporation, a recognized affordable housing lending group such as the Housing Partnership Fund, or a public entity that is not affiliated with Developer or any of Developer's affiliates, other than as a depositor or a lender.

(c) Developer shall demonstrate to the Agency's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate acquisition, construction, permanent financing and/or refinancing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Developer shall provide to the Agency, in addition to any other information reasonably required by the Agency, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, permanent financing or refinancing to ensure the viability of the Development, and adequate financing for the Development would not be available on similar terms without the proposed subordination.

(d) The subordination agreement(s) shall be in a form reasonably acceptable to Agency Counsel, and shall be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement shall provide the Agency with rights to cure any defaults by Developer, including: (i) providing the

Agency or its successor with copies of any notices of default at the same time and in the same manner as provided to Developer; and (ii) providing the Agency with a cure period of at least sixty (60) days to cure any default.

(e) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the Agency, provided, however, that nothing in this subsection (e) shall prohibit the Agency from approving the refinancing of a Senior Loan.

(f) No subordination may limit the effect of the Deed of Trust and/or the Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the Agency under the Loan Documents, unless HUD is the holder of the Senior Loan, in which case the HUD required Rider shall prevail.

(g) Upon a determination by the Agency Executive Director that the conditions in this Section have been satisfied, the Agency Executive Director or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

In addition, any agreement to subordinate shall comply with the requirements of Health and Safety Code Section 33334.14.

ARTICLE 3
DEVELOPER OBLIGATIONS

Section 3.1 Construction Contract. All construction work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that the Developer enters for construction of the Development shall provide that at least ten percent (10%) of the costs incurred shall be payable only upon completion of construction, subject to early release of retention for specified subcontractors upon approval by the Agency. The Agency's receipt of the construction contract shall in no way be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

Section 3.2 Commencement of Construction. The Developer shall cause the commencement of construction of the Development no later than the date set forth in the Development Schedule attached is Exhibit E or such later date as the Agency Executive Director may approve.

Section 3.3 Completion of Construction. The Developer shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later the date set forth in the Development Schedule attached is Exhibit E or such later date as the Agency Executive Director may approve.

Section 3.4 Construction Pursuant to Plans and Laws; Prevailing Wages.

(a) The Developer shall construct the Development in conformance with the plans and specifications approved by the City building department.

(b) The Developer shall cause all work performed in connection with the Development to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, Agency or municipal governments or agencies now in force or that may be enacted hereafter; (ii) prevailing wage provisions of the federal Davis-Bacon Act, if applicable, and implementing rules and regulations; (iii) applicable state prevailing wages pursuant to Labor Code Section 1770 et seq., and the regulations pursuant thereto, as further set forth in subsection (c) below; (iv) the HUD quality standards set out in 24 CFR 882.109 and the cost-effective, if applicable, and energy conservation and effectiveness standards in 24 CFR 39, if applicable, and (v) all applicable directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction.

(c) To the extent applicable, the Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices as required by Labor Code Sections 1777.5 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR"). The Developer shall and shall cause the contractor and subcontractors to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. The Developer shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq. and apprentices have been employed are required by Labor Code Sections 1777.5 et seq. The Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property. This Section 3.4(c) shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.5 Marketing Plan. No later than six (6) months prior to the projected date of the completion of the Development, the Developer shall submit to the Agency Developer's plan for marketing the Development to income-eligible households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts and compliance with fair housing laws.

Section 3.6 Equal Opportunity. During the construction of the Development there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

Section 3.7 Progress Reports. Until such time as the Developer has received a certificate of occupancy from the City for the Development, the Developer shall provide the Agency with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time.

Section 3.8 Construction Responsibilities. It shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the Agency with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the Agency, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the Agency as to the quality of the design or construction of the Development.

Section 3.9 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the Agency or any other lender or other third party in connection with the Development, then the Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Agency a surety bond in sufficient form and amount, or provide the Agency with other assurance satisfactory to the Agency that the claim of lien or stop notice will be paid or discharged.

(b) If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the Agency may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternately, the Agency may require the Developer to immediately deposit with the Agency the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The Agency may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property.

the Developer authorizes the Agency, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the Agency deems necessary or desirable to protect its interest in the Development and Property.

Section 3.10 Inspections. The Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the Agency and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

Section 3.11 Approved Development Budget; Revisions to Budget. As of the date of this Agreement, the Agency has approved the Approved Development Budget set forth in Exhibit D. The Parties acknowledge that prior to the construction loan closing for the Development, the Development Budget will be revised from time to time. The Developer will submit amendments to the Approved Development Budget to the Agency for approval within ten (10) days of the date the Developer receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the Agency shall be required to amend the Approved Development Budget.

Section 3.12 Relocation Obligations.

(a) The Developer shall retain a relocation consultant, prepare a relocation plan and submit it to the Agency for approval, which shall not be withheld unreasonably (the "Relocation Plan"), and deliver or cause to be delivered all required notices to occupants of the Property under applicable relocation law. The Developer shall comply with all applicable local, state, and federal statutes and regulations (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, California Government Code Section 7260 et seq., and accompanying regulations) with respect to preparing the Relocation Plan, relocation planning, advisory assistance, and payment of monetary benefits. Developer shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(b) The Developer shall indemnify, defend and hold harmless (with counsel reasonably acceptable to the Agency and City), the Agency and City and their respective council members, board members, officers, employees, agents, successors and assigns against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including reasonable attorneys' fees) arising out of the failure or alleged failure of Developer, the City or the Agency to satisfy relocation obligations related to the development of the Property. This obligation to indemnify shall survive termination of this Agreement.

Section 3.13 Affordability Restrictions. The Developer shall cause to be recorded against the Property concurrently with the close of escrow for Developer's acquisition of the Property the Regulatory Agreement, substantially in the form attached hereto as **Exhibit C**, providing, among other matters, that not more than forty-nine percent (49%) of the units in the Development shall be operated as affordable rental units for lower income households and 100%

of the units (except for the resident manager's unit) shall be rented to senior or elderly households, all as defined in the Regulatory Agreement, for a period of not less than fifty-five (55) years.

Section 3.14 Use. The Development shall be used only for purposes consistent with this Agreement and the Regulatory Agreement.

Section 3.15 Insurance. The Developer shall maintain and keep in force, at the Developer's sole cost and expense, the applicable insurance coverage set forth in Exhibit F. Evidence of such coverage provided to the Agency Manager within ten (10) days of execution of this Agreement, but in no event later than the initial disbursement of Loan funds pursuant to this Agreement.

Section 3.16 Transfers.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, encumbrance, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and the Developer retains title. The term "Transfer" shall exclude the leasing of any single unit in the Development to an occupant in compliance with the Regulatory Agreement.

(b) No Transfer shall be permitted without the prior written consent of the Agency, which the Agency may grant or deny in its sole discretion. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

(c) The Developer anticipates syndicating the low income housing tax credits that will be generated by the Development, which syndication will require transfer of the Property and assignment of this Loan to a limited partnership. The Agency hereby approves the transfer of the Property and the assignment of the Loan to a California limited partnership in which the Developer or a wholly-controlled nonprofit affiliate of the Developer is the general partner. provided that the transferee expressly assumes the obligations of the Developer under this Agreement, the Note, the Deed of Trust, Assignment of Plans, and the Regulatory Agreement, utilizing a form of assignment, assumption and release agreement approved by the Agency.

The Agency hereby approves the initial sale of limited partnership interests in the Developer, provided that: (i) the amended partnership agreement of the Developer provides for capital contributions of the general and limited partners of the Developer consistent with Approved Development Budget; (ii) copies of all documents associated with the low income housing tax credit syndication of the Project are provided to the Agency.

The Agency also hereby approves future Transfers of the limited partner interest in the Developer provided that: (i) a wholly owned affiliate of the initial limited partner retains a membership or partnership interest and serves as a managing member or managing general partner

of the successor limited partner; and (ii) the initial limited partner remains liable for all unpaid capital contributions.

The Agency also hereby approves the transfer of the general partner interest in the Developer to a nonprofit affiliate of Eden Housing, Inc. controlled by Eden Housing, Inc. In the event the general partner of the Developer is removed by the limited partner of the Developer for cause following default under the Developer's partnership agreement, the Agency hereby approves the transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation or limited liability company selected by the limited partner and approved by the Agency, which approval shall not be withheld unreasonably, delayed or conditioned.

The Agency also hereby approves a Transfer of the Property from the Developer to Eden Housing, Inc. or a nonprofit affiliate of Eden Housing, Inc., and an assumption of the Loan by such transferee provided that the transferee expressly assumes the obligations of the Developer under this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement, utilizing a form of assignment, assumption and release agreement approved by the Agency.

(d) The Agency approves the grant of the security interests in the Property for the construction and permanent financing of the Development consistent with the Approved Development Budget, and shall not unreasonably withhold its approval of the grant of the security interests in the Property for the rehabilitation of the Development and refinancing of the Development.

Section 3.17 Non-Discrimination. The Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, disability, sex, sexual orientation, marital status, familial status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development.

Section 3.18 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or contracts made or entered into by the Developer, its successors or assigns, as to any portion of the Development shall contain therein the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of

the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease,

transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 3.19 Hazardous Materials.

(a) Developer shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Developer shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily and lawfully used in the construction and maintenance of projects like the Development or kept and used in accordance with all applicable laws in and about residential property of this type.

(b) Developer shall immediately advise the Agency in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Developer or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The Agency shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and

to have its reasonable attorneys' fees in connection therewith paid by Developer. Developer shall indemnify and hold harmless the Agency and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the Agency in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without the Agency's prior written consent, which shall not be unreasonably withheld, Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Agency's reasonable judgment, impair the value of the Agency's security hereunder; provided, however, that the Agency's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Agency's consent before taking such action, provided that in such event Developer shall notify the Agency as soon as practicable of any action so taken. The Agency agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Developer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Developer establishes to the reasonable satisfaction of the Agency that there is no reasonable alternative to such remedial action which would result in less impairment of the Agency's security hereunder; or (iv) the action has been agreed to by the Agency.

(e) Developer hereby acknowledges and agrees that (i) this Section is intended as the Agency's written request for information (and Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Agency's or the trustee's rights and remedies under the Deed of Trust, the Agency may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an

unsecured creditor, including reduction of its claim against the Developer to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Agency's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Developer shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Agency in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Agency upon its demand made at any time following the conclusion of such action.

Section 3.20 Records. The Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the Agency to inspect and copy records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current.

Section 3.21 Audits. The Developer shall make available for examination at reasonable intervals and during normal business hours to Agency all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit Agency to audit, examine, and make excerpts or transcripts from such records at Agency's cost or expense. Agency may make audits of any conditions relating to this Agreement.

Section 3.22 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, the Developer shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if the Developer has not cured such condition within thirty (30) days after receiving a Agency notice of such a condition, then in addition to any other rights available to the Agency, the Agency shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of senior lenders, and if economically feasible in the Agency's reasonable judgment after consultation with the Developer, if any improvement now or in the future on the Property is damaged or destroyed, then the Developer shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the Agency with such changes as have been approved by the Agency. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days,

or such longer period approved by the Agency in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then the Developer shall make up the deficiency. If the Developer does not make repairs, then any insurance proceeds collected for such damage or destruction shall be distributed as if such proceeds were Residual Receipts (as defined in the Note), subject to the rights of the senior lenders.

Section 3.23 Fees and Taxes. The Developer shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by the Developer, and shall pay such charges prior to delinquency. The parties acknowledge that Developer shall apply for welfare exemption under Section 214 of the California Tax and Revenue Code.

Section 3.24 Notice of Litigation. The Developer shall promptly notify the Agency in writing of any litigation materially and adversely affecting the Developer or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 3.25 Agency's Special Right of First Refusal.

(a) Grant of Refusal Right. Developer grants to the Agency a right of first refusal (the "Agency's Refusal Right") to purchase the Development on the terms and conditions set forth in this Section 3.25.

(b) Term of Refusal Right. The term of the Refusal Right shall commence on the first day following the expiration of the 55-year Agency Regulatory Agreement, and shall terminate on the earlier of (a) one year thereafter or (b) ninety (90) days after notice of a bona fide offer pursuant to paragraph (c) of this Section 3.25.

(c) Refusal Right Exercise; Assignment of Refusal Right. Prior to accepting any bona fide offer to purchase the Development during the Term of the Refusal Right, Developer shall notify Agency and Developer's investor limited partner, if any, of any such offer and deliver to each of them a copy thereof. Developer shall not accept any such offer unless and until the Refusal Right has expired without exercise by Agency. Agency may exercise the Refusal Right by delivery to Developer of written notice of exercise ("Exercise Notice") within ninety (90) days after the Agency has received Developer's notice of bona fide offer. The Agency shall have the right to assign the Refusal Right granted in this Section 3.25 to the City of Lafayette or to the successor public agency of the Agency.

(d) Purchase Price Under Refusal Right. The purchase price for the Development (the "Refusal Purchase Price") pursuant to the Refusal Right shall be: (A)(i) the minimum purchase price required by Section 42(i)(7)(B) of the Internal Revenue Code of 1986 as amended (the "Code), or (ii) if no longer applicable, the purchase price shall be equal to all outstanding debt secured by the Development, plus real property taxes and assessments, plus exit taxes if

applicable; and (B) all fees, costs and expenses charged to Developer in connection with the Refusal Right by any lender holding a secured mortgage on the Development, including without limitation, any and all assignment and/or assumption fees and charges, credit, appraisal, inspection, physical needs assessment fees, document preparation fees, lender in-house or out side counsel fees; it being the parties' agreement that such lender fees, costs and expenses shall be the responsibility whether or not title to the Development is conveyed to the Agency pursuant to the Refusal Right. The Developer shall be responsible for Developer's own legal fees and Developer's administrative costs and expenses incurred by Developer in connection with the Agency's special Refusal Right. The Agency shall be responsible for the Agency's and City's due diligence actions and all other costs and expenses that the Agency and/or City determine are necessary in the exercise of this Refusal Right as the potential buyer and/or borrower. If the Agency desires that existing Reserves held by a secure lender or the Developer be transferred to Agency in connection with the transfer of the Development, the Refusal Purchase Price shall increase by the amount of such Reserves, unless such Reserves are of the type whose use is restricted by any secured lender or by law. In such event, (i) no distribution of such restricted Reserves to the Developer shall be required in connection with a transfer of the Development pursuant to the Refusal Right and (ii) such restricted Reserves shall be transferred to the Agency in connection with the transfer of the Development without cost.

(e) Escrow. Upon receipt by the Developer of an Exercise Notice, the parties shall establish an escrow with a title company designated by the Agency, subject to the Developer's reasonable approval (the " Escrow Holder"). The parties may deliver to the Escrow Holder jointly executed supplemental escrow instructions to supplement the terms of (but consistent with) this Section 3.25. The parties authorize and instruct the Escrow Holder to conduct the escrow conveyance of the Property in accordance with this Section 3.25, any such supplemental escrow instructions, applicable law, and the custom and practice for similar real estate conveyance in Contra Costa County (to the extent not inconsistent with this Agreement or the supplemental escrow instructions).

(f) Closing Date. The closing for conveyance of the Development by the Developer to the Agency (the "Refusal Right Closing") shall occur within ninety (90) days after receipt of the Exercise Notice; however, in no event shall the Refusal Right Closing occur before the end of the Term of the Agency Regulatory Agreement or other regulatory agreement between Developer and any State, federal or other public body or agency without written approval of such State, federal or other public body or agency.

(g) Condition of Title. At the Refusal Right Closing, the Developer shall convey fee title to the Property by delivery of a standard grant deed, free of all liens, encumbrances and other title exceptions except for: (1) the lien of property taxes not yet due and payable; (2) the lien of any Permitted Real Property Encumbrances; and (3) any liens, encumbrances and other title exceptions that existed at the time of the Developer's acquisition of the Property.

(i) The "Permitted Real Property Encumbrances" shall include any encumbrances that are placed on the Development with the Agency's approval prior to the

expiration of the Term of the Regulatory Agreement, where such encumbrances are reasonably necessary to fund capital improvements, maintenance, operations of the Property in a manner consistent with the terms of this Agreement, including rehabilitation or reconstruction financing and refinancing as Developer deems reasonably necessary or desirable and benefits the Development. Before the Developer places any encumbrance or indebtedness on the Property that will last beyond the Term of the Regulatory Agreement, the Developer shall notify the Agency of the proposed indebtedness to be secured by such encumbrance and seek the Agency's approval for the indebtedness. The Developer shall submit information to the Agency regarding the amount, interest rate, term, and monthly payment schedule of the proposed indebtedness, as well as the purpose and use of the proposed indebtedness. Within fifteen (15) days after receipt by the Agency of such information, the Agency and the Developer shall meet and confer on whether the proposed indebtedness is permissible and acceptable to the Agency. The Agency shall not unreasonably withhold its approval of a proposed encumbrance if the Agency determines that the indebtedness secured by the proposed encumbrance is necessary to fund capital improvements or maintenance of the Property in a manner consistent with the terms of this Agreement, including rehabilitation financing and refinancing as Developer deems reasonably necessary or desirable and benefits the Development, and the indebtedness is to be provided on commercially reasonable terms. In no event shall the Developer place an encumbrance on the Property if the encumbrance secures funds that are retained by the Developer for uses unrelated to the improvement, maintenance, rehabilitation, reconstruction or refinancing of the Development, or if the encumbrance secures funds that are pooled for the benefit of several properties. Nothing in the preceding sentence shall prohibit the Developer from financing a reasonable administrative fee or developer fee in connection with the above described financing or refinancing.

(h) Physical Condition. At the Refusal Right Closing, the Developer shall deliver possession to the Property in an "as is" condition without representation or warranty. Notwithstanding any other provision in this Agreement, if the Agency exercises this Refusal Right, upon the Closing the indemnification provisions in this Agreement (including, without limitation, Sections 3.4, 3.12, 3.19 and 6.4) shall be null and void for or with respect to the Agency's acts and/or omission occurring after the Closing, so long as the acts and omissions are unrelated to an obligation of Developer under the Agreement.

(i) Contracts; Closing; Closing Costs; Proration. Upon deposit into escrow of the grant deed and the Refusal Purchase Price in cash and upon satisfaction of all other requirements for the Refusal Closing, the Escrow Holder shall close the escrow by recording the grant deed and by disbursing the purchase price to the Developer or its order. The parties shall execute any and all documents reasonably necessary to complete the conveyance. All current installments of real and personal property ad valorem taxes, if any, including without limitation all supplemental taxes attributable to the period prior the Refusal Right Closing, shall be prorated between the Developer and the Agency as of 12:01 a.m. on the Refusal Closing date. The Agency shall pay all and every other taxes, fees, premiums, and costs of Refusal Right Closing, including Developer's attorney's fee.

(j) Quitclaim Deed on Termination of Refusal Right. Upon termination of this Refusal Right pursuant to Section 3.25(b), Agency agrees to execute and deliver a quitclaim deed to Developer within thirty (30) days after termination and to execute, acknowledge and deliver any other documents required by Developer's title insurance company to remove the Refusal Right as an encumbrance against the Development.

(k) Subordination and Amendments to Agency's Refusal Right . The parties acknowledge that the Agency's Refusal Right is an extraordinary right granted to the Agency and is done so only to the extent and so long as the Agency's Refusal Right does not limit, hinder, or restrict Developer's right to obtain project financing from lenders and/or investors, or limit the choices or make the financing terms less desirable. Accordingly, the Agency shall subordinate its Refusal Right under this Section 3.25 to all senior loans to which the Agency subordinated its Regulatory Agreement and Deed of Trust pursuant to Section 4.11.B of this Agreement. The Agency shall reasonably consider amendments to this Section 3.25 required by a senior project lender or investor in order to obtain the above-described Permitted Real Property Encumbrances.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Section 4.1 Representations and Warranties. The Developer hereby represents and warrants to the Agency as follows:

(a) Organization. The Developer is duly organized, validly existing California limited partnership and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered by the Developer, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered by the Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents by the Developer or of any other documents or instruments executed and delivered, or to be executed or delivered by the Developer, pursuant to this Agreement, nor the performance by the Developer of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or Agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The development of the Property will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or Agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the actual knowledge of the Developer, threatened against or affecting the Developer, or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially and adversely affect the Developer's ability to repay the Loan or impair the security to be given to the Agency pursuant hereto.

(h) Title to Land. At the time of the Developer's acquisition of the Property, the Developer will have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the Agency, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the Agency or approved in writing by the Agency.

(i) Financial Statements. The financial statements of the Developer and other financial data and information furnished by the Developer to the Agency, if any, fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse,

material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(j) Conflict of Interest. Except for approved eligible administrative or personnel costs, no person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the Agency, or any person related within to such person, who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Developer shall exercise due diligence to ensure that the prohibition in this paragraph (j) of Section 4.1is followed.

ARTICLE 5
DEFAULT AND REMEDIES

Section 5.1 Events of Default. Each of the following shall constitute a "Default" by the Developer under this Agreement:

(a) Failure to Make Payment. Failure by the Developer to repay the principal and any interest on the Loan within fifteen (15) days of receipt of written notice from the Agency that such payment is due pursuant to the Loan Documents.

(b) Breach of Covenants. Failure by the Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Agency to the Developer and to any limited partner of the Developer who has requested written notice from the Agency of such failure ("**Permitted Limited Partner**") or, if the breach cannot be cured within thirty (30) days, the Developer shall not be in breach so long as Developer is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 5, the specific provisions shall control. The Permitted Limited Partner shall have thirty (30) additional days to cure a breach beyond the cure periods for the Developer described in this subsection. If a Permitted Limited Partner cannot cure a Default because the Developer's general partner is in bankruptcy and/or because the cure requires removal of the general partner of the Developer and the Permitted Limited Partner is proceeding diligently to remove the general partner of the Developer in order to effect a cure of the Default, the cure period may be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than one hundred eighty (180) days after the date of receipt by the Permitted Limited Partner of written notice of Default.

(c) Assignments. Failure by the Developer to take all actions necessary to implement the Assignment of Plans and deposit the Documents with the Agency, subject to the rights of any

Senior Lender under any subordination agreement which may be executed by the Agency pursuant to Section 2.7 above or the Inter-Creditor Agreement with the County of Contra Costa.

(d) Default Under Other Loans. A default is declared by the lender of any other financing secured by the Development, after the expiration of any applicable notice and cure periods.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Developer or Developer's general partner to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Developer or Developer's general partner or seeking any arrangement for Developer or Developer's general partner under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Developer or Developer's general partner in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Developer or Developer's general partner, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Developer or Developer's general partner shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Agency, the indebtedness evidenced by the Note and shall be due in full.

(f) Assignment; Attachment. Developer or Developer's general partner shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the Agency, the indebtedness evidenced by the Note and shall be due in full.

(g) Suspension; Termination. Developer or Developer's general partner shall have voluntarily suspended its business or, if Developer is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(h) Liens on Property and the Project. There shall be filed any claim of lien (other than liens approved in writing by the Agency) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the Agency.

(i) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(j) Unauthorized Transfer. Any Transfer other than as permitted by Section 3.16; provided, however, that a Permitted Limited Partner shall have the right to cure an unauthorized Transfer of the general partnership interest in Developer by removing the unauthorized general partner and replacing it with a general partner approved by the Agency which approval shall not be withheld unreasonably.

(k) Representation or Warranty Incorrect. Any representation or warranty of the Developer contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Agency in connection with any of the Loan Documents, proves to have been incorrect in any material and adverse respect when made.

Section 5.2 Remedies. Subject to the nonrecourse provision in the Note, the occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Agency or automatically where so specified, relieve the Agency of any obligation to make or continue the Loan and shall give the Agency the right to proceed with any and all remedies set forth in this Agreement and the Agency Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The Agency shall have the right to cause all indebtedness of the Developer to the Agency under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The Agency may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Agency as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Developer shall be liable to pay the Agency on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Agency in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The Agency shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Developer to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Assignment Agreement. The Agency shall have the right to exercise all rights under the Assignment of Plans, subject to the rights of any Senior Lender under any subordination agreement which may be executed by the Agency pursuant to Section 2.7 above or the Inter-Creditor Agreement with the County of Contra Costa.

Section 5.3 Right of Contest. Developer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Agency or the rights of the Agency hereunder.

Section 5.4 Remedies Cumulative. Subject to the nonrecourse provision in the Note, no right, power, or remedy given to the Agency by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Agency by the terms of any such instrument, or by any statute or otherwise against the Developer and any other person. Neither the failure nor any delay on the part of the Agency to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Agency of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 6
GENERAL PROVISIONS

Section 6.1 Relationship of Parties.

(a) Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Agency and the Developer or the Developer's agents, employees or contractors, and the Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement for the development of the Development. In regards to the development of the Development, the Developer shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. The Developer agrees to be solely responsible for its own acts and those of its agents and employees.

(b) The Architect has been selected by the Developer as the architect for the Development, and the Developer may, from time to time, select other consultants and vendors for the Development. Notwithstanding the preceding paragraph, the Agency shall have the right to provide input regarding the selection and, if necessary, the replacement of such other consultants or vendors employed by the Developer to perform the construction contemplated by this Agreement, and shall have the right to provide input regarding the replacement of the previously selected Architect, if necessary. The Developer shall consider in good faith such input from the Agency, and shall confer with the Agency, upon request, regarding such selection and replacement decisions.

Section 6.2 No Claims. Nothing contained in this Agreement shall create or justify any claim against the Agency or City, by any person the Developer may have employed or with whom the Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the construction of the

Development and the Developer shall use its best efforts to include simlar requirements in any contracts entered into for the construction of the Development.

Section 6.3 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the parties.

Section 6.4 Indemnification. Except as directly caused by the Agency's or the City's gross negligence or willful misconduct, the Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Agency) the Agency, the City and their respective board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the performance or non-performance of the obligations under this Agreement by the Developer Parties, the purchase and ownership of the Property by the Developer Parties, the development, marketing, rental, operation and management of the Development by the Developer Parties, or any documents executed by the Developer Parties in connection with the Development. The provisions of this Section 6.4 shall survive termination of this Agreement. The "Developer Parties" shall mean the Developer and its general partner, officials, officers, employees, volunteers, agents and representatives.

Section 6.5 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Agency or City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the Agency, or for any amount which may become due to the Developer or its successor or on any obligation under the terms of this Agreement. No director, officer, employee or agent of the Developer, or limited partner if Developer is a limited partnership, shall be personally liable to the Agency or City in the event of any Default or breach by the Developer, or for any amount which may become due to the Agency or City or on any obligation under the terms of this Agreement.

Section 6.6 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

Section 6.7 Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the Agency is required or permitted under this Agreement, such action may be given, made, or taken by the Agency's Executive Director or his/her designee without further approval by the Agency Board, and any such action shall be in writing. The amount of the Loan may not be increased without approval of the Agency Board.

Section 6.8 Waivers. Any waiver by the Agency of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Agency to take action on any breach or default of the Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to the Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Agency to any act or omission by the

Developer shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the Agency's written consent to future waivers.

Section 6.9 Notices, Demands and Communications. Formal notices, demands, and communications between the Agency and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, or faxed with a copy mailed within one business day of facsimile transmission, emailed with a copy mailed within one business day of emailed transmission to the principal office of the Agency and the Developer as follows:

Agency:
Redevelopment Agency of the City of Lafayette
3675 Mt. Diablo Boulevard, Suite 200
Lafayette, CA 94549
Attention: Executive Director
Fax No: (925) 284-3169

Developer:

Eden Housing, Inc.
22645 Grand Street
Hayward, California 94541-5031
Attention: Executive Director
Fax No: (510) 582-6523

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

Section 6.10 Applicable Law. This Agreement will be governed by California law.

Section 6.11 Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors and assigns.

Section 6.12 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 6.13 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in

full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 6.14 Future Agency and City Actions. The parties acknowledge and agree that this Agreement does not constitute Agency or City approval of the Land Use Approvals or construction of the Development. The Agency and City retains full discretion to approve or disapprove the Land Use Approvals and construction of the Development; and

Section 6.15 Counterparts; Multiple Originals. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute this Agreement.

Section 6.16 Force Majeure. In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to war; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Developer or Developer's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) business days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten business (10) days of receipt of the notice. In no event shall the Agency be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 6.17 Time is of the Essence. Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

Section 6.18 Integration Clause. This Agreement, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

Section 6.19 Law Governing. This Agreement shall in all respects be governed by the law of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Contra Costa County in the State of California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

Section 6.20 Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

Section 6.21 Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

Section 6.22 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 6.23 Investor Limited Partner Provisions. If and when the Developer transfers the Property and assigns the Loan to a limited partnership in accordance with Section 3.16 to qualify for low income housing tax credit financing, the Agency agrees to the following provisions for the benefit of Developer's investor limited partner:

(a) The Agency will give the limited partner a copy of any written notice (at the limited partner's address set forth in the Regulatory Agreement) that the Agency gives to Developer under this Agreement, the Regulatory Agreement and the other Agency Loan Documents;

(b) The Agency will give the limited partner ten (10) days after the limited partner's receipt of such notice to cure a non-payment of any sum due under the Agency Documents;

(c) The Agency will give the limited partner thirty (30) days after the limited partner's receipt of such notice to cure any other default under this Agreement, the Regulatory Agreement and other Agency Loan Documents;

(d) If a default is incapable of being cured within thirty days, the Agency will give the limited partner an additional ninety (90) days to cure such default provided the limited partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;

(e) If the limited partner makes any such payment or otherwise cures such default, the Agency will accept such action as curing such default as if such payment or cure were made by Developer;

(f) The Agency will permit the limited partner to remove the general partner of Developer in accordance with the Partnership Agreement, provided that the substitute general partner is acceptable to Agency; and

(g) The Agency will permit insurance proceeds to be used to rebuild the Project provided that (i) sufficient funds are provided from other sources to effectively rebuild the Project to a lawful multifamily housing complex, and (ii) subject to the rights of any Senior Lenders, Agency shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as Agency may impose

Section 6.24 HUD Required Provisions. In the event Developer receives a Reservation for a Section 202 Capital Grant from HUD, prior to the HUD initial closing, the Agency agrees to execute an addendum to this Agreement, the Regulatory Agreement, the Loan Documents to incorporate by reference HUD-required provisions, a copy of the current requirements are attached hereto as **Exhibit G**.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

Eden Housing, Inc. a California nonprofit public benefit corporation

By: _____
Linda Mandolini, Executive Director

Redevelopment Agency of the City of Lafayette, a public body, corporate and politic

By: _____
Its: Executive Director

Approved as to Form:

_____
Agency Counsel

EXHIBIT A
Legal Description of the Property

EXHIBIT B
From of Deed of Trust